

DETAILED ACTION

1. This Office Action is the answer to the Amendment filed on January 16, 2009, which paper has been placed of record in the file.
2. Claims **1-12, 15-31 and 33-39** are pending in this application.

Examiner's Amendment

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in the interview with Mr. David Shifren on June 4, 2009.

Amending claim 21 as the following:

21. (Currently amended) Computer-based apparatus for use in managing a service level associated with resources in a distributed information technology (IT) system based on financial terms, the apparatus comprising:

one or more processors comprising:

an electronic contract manager module, ~~executed by a processor of a computer,~~ operative to construct and maintain an electronic contract that contains information pertaining to descriptions of one or more business transactions in IT terms, financial implications of one or more business transaction service levels, and reporting to be performed in one or more financial terms and to determine at least one financial optimization based at least part on the measured at least one service level of at least one element of the IT system and based at least in part on the electronic contract, the financial optimization being specified in the electronic contract at the time of construction such that, at the time the financial optimization is to be determined, the

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electronic contract is accessed to identify a particular financial metric of the financial optimization that is to be computed and to identify an operation for computing the particular financial metric, the one or more business metrics are converted to one or more financial equivalents wherein the one or more financial equivalents comprise a cost of a lost connection, a cost of down time, and a relationship between revenue and network latency; and

one or more electronic contract agent modules, ~~executed by a processor of a computer~~, operatively coupled to the manager module and located in one or more distributed elements of the IT system being monitored, operative to measure at least one service level of at least one distributed element of the IT system in terms of one or more business metrics based on the electronic contract and to execute at least one control command based at least in part on at least on the at least one distributed element; and

one or more memories, operatively coupled to the one or more processors, for storing at least one of the electronic contract and results of the measurement operation.

Allowable Subject Matter/Reasons for Allowance

4. Claims **1, 21, 25 and 39** are allowed over the prior arts cited records.

The closest prior art is:

Chaar (US 6,857,020) discloses one or more SLA-specified service-level monitors and/or one or more provider-owned service-level management monitors are used by the invention to monitor one or more quality measures of one or more QoS-assured service systems and to generate one or more service-level monitoring events when the monitored system does not conform to the respective quality measures. The invention includes a cross-SLA event manager that receives the monitoring events and

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determines which one or more SLA contracts are affected by the events. Then one or more SLA management objects (SMOs) track the SLA-specific events generated by the event manager according to each of the respective SLA contracts. The SMOs also determine how to allocate/deallocate/configure SLA management resources and/or to determine the effect of these changes on the service system operation to assure the contracted quality of service. A cross-SLA resource manager handles the SMOs' resource allocation requests and optimizes the allocation of available resources per the service provider's SLA management objectives. Finally, a SMO manager manages the execution of SMOs and facilitates the integration and management of service system testing-time and production-time activities. An SMO, as explained in Chaar, tracks the effect of resource management actions on the service system operation to assure the contracted quality of service. However, nowhere does an SMO (or a CSEM) in Chaar indicate that a financial optimization is specified in the electronic contract at the time of construction such that, at the time the financial optimization is to be determined, the electronic contract is accessed to identify a particular financial metric of the financial optimization that is to be computed and to identify an operation for computing the particular financial metric. Again, all that the SMO/CSEM arrangement of Chaar does is track the effect of resource management actions on the service system operation to assure the contracted quality of service. The present claimed invention also recites a limitation wherein an apparatus comprises at least one processor operative to construct an electronic contract. In an illustrative embodiment described in the present specification at, for example, page 11, lines 22-23, an ecBuilder module constructs the

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contract based on analyst-specified requirements. Chaar discloses an e-business SLA management framework which helps a customer and a provider negotiate SLA terms and conditions by providing the customer and the provider an agreeable abstraction of the service management system. Thus, the teaching of Chaar wherein a framework helps a customer and a provider negotiate SLA terms and conditions fails to meet the present claimed invention wherein a processor constructs an electronic contract. In fact, the relied-upon portion of Chaar specifies that the e-business SLA management framework comprises an established e-business SLA contract. See Chaar at column 7, lines 49-50. See also Chaar at, for example, column 8, lines 29-32; column 8, lines 47-50; and column 8, lines 64-66. In addition, nowhere does Chaar teach or suggest any such a conversion of business metrics to financial equivalents. Nor does Chaar teach or suggest that any financial impact assessment relates to a cost of a lost connection, a cost of down time, and a relationship between revenue and network latency. In fact, Chaar makes no mention of revenue considerations.

Note that both Chaar (Reel/Frame 011908/0621) and the present application (Reel/Frame 012247/0426) are currently assigned of record to International Business Machines Corporation (IBM). Furthermore, both Chaar and the claimed invention were subject to an obligation of assignment to IBM at the time the claimed invention was made. Because Chaar qualifies as prior art only under 35 U.S.C. § 102(e), pursuant to 35 U.S.C. §103(c), Chaar does not qualify as prior art in any possible rejection under 35 U.S.C. §103(a).

Therefore, it is clear from the description of Chaar, that the prior art does not considered the possibility of: at least one processor operative to: construct and maintain an electronic contract that contains information pertaining to descriptions of one or more business transactions in IT terms and the one or more business metrics are converted to one or more financial equivalents wherein the one or more financial equivalents comprise a cost of a lost connection, a cost of down time, and a relationship between revenue and network latency, as included in claims 1, 21, 25 and 39.

5. Claims (2-12, 15-20), (22-24) and (26-31, 33-38) are allowed because they are dependent claims of the allowable independent claims 1, 21 and 25 above, in that order.

Conclusion

6. Claims **1-12, 15-31 and 33-39** are allowed.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (571) 272-6796. The examiner can normally be reached on Monday-Friday from 9:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3600.

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450

Alexandria VA, 22131-1450

Or faxed to:

(571) 273-8300 (for formal communication intended for entry),

or

(571) 273-6796 (for informal or draft communication, please label
"PROPOSED" or "DRAFT").

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nga B. Nguyen/

Primary Examiner, Art Unit 3692

June 1, 2009